

REMARKS

Reconsideration of the application is respectfully requested.

Examiner has rejected claims 1-6 under 35 USC 103(a) as being unpatentable over the Painter reference, the Wolf reference, the Gilles reference and the Wibert reference.

Applicant hereby submits the declaration of Saul Katz and Valerie Teskey (formerly Price), the co-inventors of the present application. Mr. Katz and Ms. Teskey attest that they conceived of the invention and reduced it to practice prior to February 17, 2000. The Painter reference was published in June, 2002 and the Wolf and Gilles references were both filed on March 14, 2000.

Therefore, the inventors of the present application invented the claimed subject matter before the relevant dates of those references.

With respect, it is submitted that the Wibert reference does not create a *prima facie* case of obviousness. Wibert teaches a multi-component carbohydrate system, which is designed to avoid excessive blood glucose peaks. As stated in column 2, lines 42-43, the composition "provides a balanced mix [of carbohydrates] so that the digestive tract absorbs a substantially constant amount of carbohydrate over time." It should be noted that constant delivery of carbohydrate is not the equivalent of achieving a low glycemic index. Spikes in blood glucose can be avoided by providing a constant moderate or high supply of carbohydrates. In other words, the object of the Wibert patent may be achieved without creating a low glycemic index product.

This point is reinforced by the fact that the Wibert composition contains a significant amount of sucrose, which is rapidly absorbed and has a very high glycemic index.

There is no description of the glycemic index of the complete composition taught by Wibert. The slowest carbohydrates are referred to in column 3, lines 35-39 as having a glycemic index less than 80. As these slowly absorbed carbohydrates are being mixed with rapidly absorbed and moderately absorbed carbohydrates, it is highly unlikely that the glycemic index of the complete product taught

by Wibert is a low glycemic index product. The applicant in the present case has defined low glycemic index to be lower than 50 (glucose standard).

The applicant's claim of low glycemic index has been clinically validated, which is the only way of determining with any certainty what the glycemic index of a particular food is. The Wibert patent does not give the glycemic index of the food it teaches, and the glycemic index cannot be accurately predicted from the information provided. Glycemic index depends not only on the GI value of individual ingredients but also the rate of emptying of the stomach and the rate of absorption into the small intestine. Clinical validation testing is necessary to have confidence in any claim to an accurate GI value.

Claim1 requires that the claimed food product have a GI value of less than about 50. The lowest value in Wibert is about 80, and that was for a slowly absorbed carbohydrate. The moderately absorbed and quickly absorbed carbohydrates which are taught by Wibert are likely to raise that number. Therefore, because Wibert does not teach a low glycemic index food, it cannot be used in a obviousness rejection.

CONCLUSION

In view of the foregoing remarks and amendments, it is respectfully submitted that this application is in condition for allowance and allowance thereof is respectfully requested.

Respectfully submitted,

Saul Katz, et al.

By:


Edward Yoo (Reg. No. 41,435)

CORRESPONDENCE ADDRESS CUSTOMER NO. 22828

Attachments:

1. Declaration under Rule 1.131 of Saul Katz and Valerie Teskey (formerly Price)

2. Petition for Extension of Time
3. Credit Card Fee Transmittal.